IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE SIDE

Letters Patent Appeal NO. 280 OF 1998

1. Gavkari, Belpada
Tal: Panvel, Dist Raigad
through Panch Committee
(a) Pandurang Under Barse
(b) Narayan Damba Koli
(c) Shivram Laxman Morbekar
(d) Sukhir Nama Mhatre
(e) Kisan Kharpat Mhatre ...Appellants

Vs.

1.Narayan Gokul Gharat
Since deceased through his Legal Heirs.
1. Anant Narayan Gharat
2. Shirish Narayan Gharat
3. Ramkrishna Narayan Gharat
4. Smt. Jamunabai Narayan Gharat
5. Sow Janabhai Gopinath Tandel
6. Sow Suman Bhalchandra Patil
7. Sow Gulab Shashikant Mhatre
8. Sow Sheela Padmakar Patil
9. Sow Vasanti Somnath Gharat
10. Smt. Uma Arun Mhatre
11. Sow Devyani Vijay Mhatre
12. Sow Kavita Sunil Patil

&

2.Babu Gokul Gharat
3.Seetaram Gokul Gharat
4.Kamal Gokul Gharat
5.Kalu Gokul Gharat
6.Genu Gokul Gharat ...Respondents

Mr. M.K. Naesari Advocate for Appellant
Mr. A.Y. Sakhare, Sr. Counsel with Mr. S.A. Bhalwal i/b. M/s. Vyas & Bhalwal, for the Respondent No.1.
Mr. Rahul S. Thakur for Respondents 2 to 6
Ms. Mhambre, A.G.P. For State Respondent No.7.

CORAM: R.M.S.KHANDEPARKAR &
SMT. ROSHAN DALVI, JJ.
RESERVED ON: 8TH MARCH 2006
PRONOUNCED ON: 25TH APRIL 2006

JUDGMENT (Per Smt. Roshan Dalvi, J.)

1. This L.P.A is filed against the order of the learned Single Judge dated 5th October 1998 in F.A. No.986 of 1998 challenging the order dated 27th April 1998 in Land Acquisition Reference No.93 of 1992 passed by the learned reference Court under Section 30 of the Land Acquisition Act (L.A. Act.).

2. The only challenge in this LPA is relating to the entitlement to receive compensation under the LA Act. The Appellants are 5 villagers of village Belpada, Tal: Panvel, Dist.: Raigadh constituting their Panch Committee. The Respondents are heirs and legal representatives of one Narayan Gokul Gharat, since deceased, who has been granted compensation initially by the Special Land

Acquisition Officer and later by the Reference Court under the LA Act.

3. The Appellants claim to be a body of persons and accordingly claim to be “persons” as defined under Section 3(42) of the General Clauses Act and as a “Body of individuals” under Section 5 of the Transfer of Property Act. They are shown to be 5 separate individuals on the Panch Committee of the village who have made their claim in a representative capacity.

4. The Appellants have relied upon judgments in Kalyan Singh Vs. Smt. Chhoti , reported in AIR 1990 Supreme Court,396 , Kodia Goundar Vs. Velandi Goundar reported in AIR 1955 Madras 281. Mukaremdas Mannudas Vs. Chhagan Kisan Bhawasar reported in AIR 1959 Bombay 491(V 46 C 146) to show that any villagers can sue in representative capacity. However, the provisions of Order 1 Rule 8 are required to be followed in such cases, which is not done by the Appellants.

5. The material aspect is to see whether Narayan Gharat was the owner of the properties under reference or whether villagers of Belpada were the

owners represented by the said Narayan Gharat to be entitled to claim compensation.

6. The Appellants rely upon the notification issued under Section 4 of the L.A. Act,, the Declaration made under Section 6 of the L.A. Act. the notice sent under Section 9 of the L.A. Act followed by the Award under Section 12 of the L.A. Act dated 20th September 1986 passed by the SLAO.

7. The Award is of Rs.108458.15 stated to be payable to "Villagers of Belpada- Vahivatdar Narayan Gokul Gharat" as the purchaser. It may be at once mentioned that the award is not an order; it is only an offer. It has no evidentiary value. It is their case that all the villagers of village Belpada are equally entitled to the said compensation and are represented by the Appellants as their Panch Committee.

8. The Appellants must show their documents of title to claim compensation as owners of the property. They have relied upon the 7x12 extracts showing them as Kabjedars of Survey No.248/1+2+4. The extract relied upon by the

Appellants is for the year 1993-1994 which is after the acquisition of the suit property. The extract shows mutation entry no.487 which shows the properties of the Respondents from generation to generation including the properties under the reference which came to be added in the said mutation entry upon its purchase under a duly registered sale deed (described as an agreement for sale), which shall be dealt with presently.

9. The Appellants also rely upon the `Aakar Phod Patra' showing the names of the Appellants and the Respondents for Survey No.248/1+2+4. The entries made in 1928 and 1932 show the villagers of Belpada and Gokul Ganu Gharat.

10. However, the entries in the Revenue records are not documents of title. It has been held in the case of Abasaheb Bali Gharge Vs. Balaji Ramhari Gharge reported in 1996(1) Mh.L.J., 209 that mutation entries or entries in the record of rights are made only for the fiscal purpose of recovering revenue and themselves do not amount to transfer of title of holder of property in favour of person in whose name the entries are made.

11. The Appellants have further relied upon a letter written by Narayan Gokul Gharat in the year 1981-1982 in which he has made reference to a pond dug by the villagers in the property under reference. They have also relied upon 2 Khata Utaras of the years 1928-1932 and 1993-94 under Account Nos.87 and 179, which are extract 8A, showing other properties accounted for the purpose of revenue, but not the properties under reference. It is contended that had Narayan title to the property under reference, that would have been reflected in his Khata Utara. The extracts show the account not only in the individual name but also the villagers of Belapada. These are only stray extracts of two separate years. These Utaras would have to be read along with the mutation entry No.487 being extract 6 which shows the land under reference added thereto upon its purchase by Narayan.

12. The Appellants have relied upon another letter of Narayan making a reference to village Belpada. That letter, which is for the property under reference, only shows his residence in the said village, without more.

13. The Appellants finally relied upon 2 land revenue receipts for the years 1980- 1981, which shows interalia villagers of Belpada. These receipts are however not in respect of any particular property. These receipts are issued much after the land was acquired in 1970 and accordingly is in the same name as the award itself.

14. All these documents put together, despite showing some reference to the villagers of Belpada do not themselves show ownership of the property under reference in the absence of documents of title.

15. The statement of the Appellants in the reference Court show that the property under the reference belong to one Chunnilal as a Zamindar. The villagers are shown as his tenants (Kul). They are shown to have been gifted the said property. The said property being worth more than Rs.100/- would be required to be gifted under a registered deed of gift, which is not shown. Whether the Appellants are the successors of the tenants (Kuls) of the said Zamindar Chunnilal is also not shown.

16. The oral evidence of the Appellants in the reference Court shows that they claim to be enjoying the land under reference. They claim to be in occupation since 1928. They claim to cultivate paddy, graze cattle and enjoy the fruits of mango trees. They also claim to have constructed a tank and also claim to be taking vegetables from the water of the tank. These acts at best show the use of the land.

17. The Appellants have relied upon the judgment in the case of Vallabhdas Narayanji Vs. Special Land Acquisition Officer for Railways reported in AIR 1922 Bombay 365, in which it was held that the compensation under L.A. Act granted in respect of Bhati lands acquired by prescription by the villagers should be apportioned between the Khot and the tenant. That was because in that case the villagers showed their possession such as to constitute title by prescription. In that case the villagers cut grass on the waste lands, fed animals, had the land enclosed, sold lands by registered sale deeds so that lands passed over from hand to hand and the Khot never interfered therewith.

18. The Appellants claim title by prescription. They however have not shown their possession hostile to the true owner.

19. The Appellants have relied upon the case of Vatticherukuru Village Panchayat Vs. Nori Venkatarama Deekshithulu reported in 1991 Supp (2) Supreme Court Cases 228 showing that the longer the possession, stronger the presumption of ownership. However, continuous possession in this case has not been shown by the Appellants. Possession has not ripened into ownership and hence a claim as owner cannot be made to the SLAO.

20. Their claims are therefore contradictory. They claim as owners based upon the revenue entries. They claim as tenants (Kul) of the earlier owner Chunnilal and then claim to have been gifted the property without producing the deed of gift. They also claim title by prescription by mere user of the land from 1928. None of these claims have vested title in them.

21. The Respondents have relied upon the

registered sale deed styled as an agreement for sale dated 11th February 1916 showing purchase of the said property from one Keshav Vishnu Patankar for Rs.1000/- . It shows that it was registered with the Sub Registrar, Panvel. It shows that the consideration has been paid, possession obtained. It is therefore, contended that it is, in fact, a sale deed and not merely an agreement for sale as described and accordingly the title of the said property was transferred to Narayan.

22. The Appellants have relied upon the judgment in the case of SLAO Bombay Vs. Anil Krishna Biswas reported in 1992 Mh.L.J. 1013. where it has been held that the person having an agreement for sale not having acquired title is not entitled to compensation under the LA Act. That is indeed true, but in this case the title has been transferred since consideration is paid and possession obtained since 1916, the use of the land thereafter notwithstanding.

23. The Respondents have relied upon the judgment in the case of Veena Hasmukh Jain Vs. State of Maharashtra reported in (1999)5 Supreme

Court Cases, 725 in which it is held that the agreement for sale with the delivery of possession is to be construed as a conveyance under Section 2(g) entailing the payment of stamp duty under the Bombay Stamp Act, 1958. The said agreement having been registered with the Registry of Panvel coupled with the property having been handed over to Narayan, a complete transfer was effectuated.

24. It is therefore, argued that upon the said transfer the revenue entry also came to be made in the year 1917-1918 showing Narayan as the purchaser of the said property and consequently the mutation entry no.487 showed the additional properties in the family of Narayan Gharat.

25. The Respondents have relied upon the oldest entry in the rights column of the revenue record for the year 1917-1918 showing the said registered transfer.

26. It is further contended by the Respondents that the notice under Section 9 was addressed to the respondents and only the respondents participated and replied to the notice – not the villagers of village

Belpada. The award offer was also made to Narayan.

27. Narayan alone applied for reference for enhancement of compensation under Section 18 of the L.A. Act which was decided on 22nd December 1989.

28. All these acts are inconsistent with the claim of ownership of the villagers of Belpada as a whole.

29. No interference with the concurrent findings of the Courts is called for. Consequently this appeal fails with no order as to costs.

(SMT. ROSHAN DALVI,J.) (R.M.S.KHANDEPARKAR, J.)